IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL UNDER ARBITRATION ACT NO. 3 OF 2000

STATE OF GOA & ANR. ....Appellant

Versus

MR.T.D.ABDUL RAHIMAN REP.BY HIS ATTORNEY ....Respondent

Mr. M.D. Salkar , Aga,for the Appellant.

Mr. S.G. Dessai, Sr. Advocate with Mr. Shivan Desai for the Respondent.

Coram:- DR. S. RADHAKRISHNAN, J.

Date:- 13th October, 2006

P.C.:

1. Heard the learned counsel for the appellant and the learned counsel for the respondent.

2. The learned counsel for the respondent pointed out that no appeal lies against the order passed by the learned Addl. District Judge (II) dated 20th January, 2000.

3. The above appeal has been filed against the following Order passed by the learned Addl. District Judge (II), at Panaji which reads as under :-

" Appln. for setting aside the award is dismissed as withdrawn unconditionally. "

4. It appears that the appellant-State of Goa has moved the Addl. District Judge (II) Panaji for setting aside the award in favour of the respondent-claimant. However, in the said matter an application for withdrawal of the objections was filed by the State of Goa. Pursuant to

the said application for withdrawal of objections the above order has been passed.

5. The provisions of section 37 of the Arbitration and Conciliation Act, 1996 are very clear. The only ground under which this appeal could have at all been filed would fall under Section 37(1)(b) which reads as under :-

" 37. Appealable orders. - (1) An appeal shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely :-

(b) setting aside or refusing to set aside an arbitral award under section 34. "

6. The above order was passed on an application made by the appellant themselves before the learned Addl. District Judge for withdrawing the objections. If that be so, the order cannot be construed either as setting aside the order or refusing to set aside the order, inasmuch as the learned Addl. District Judge never applied his mind whether to set aside or refuse to set aside the award.

7. In these circumstances and under the aforesaid section no appeal can lie and the above appeal is not maintainable at all. Hence the same stands dismissed. However, having regard to the facts and circumstances of the case the appellant is at liberty to adopt any other remedy that may be available in law before the appropriate forum.

Pursuant to an order passed by this Court, certain amount has been deposited by the appellant in this Court, which has been invested by the Registrar in a nationalised bank, the same is allowed to be withdrawn by the respondent after a period of four weeks from today, with the accrued interest.

DR. S. RADHAKRISHNAN, J.

sl.